WP(C) 2511/2005
BEFORE
THE HON'BLE MR JUSTICE HRISHIKESH ROY
WP(C) NO. 2511/2005

Barada Kanta Goswami & & & Petitioner
Vs-
The Union of India and Ors & & & Respondents

For the Petitioner : Mr K K Mahanta, Senior Advocate.
Mr. S K Barkataki,
Mr D Sharma,
Mr R Hazarika.

For the Respondents : Mr C Baruah, Central Govt. Counsel.
Mr S Dutta,
Mrs M Choudhury,
Ms R Kaur,
Mr D Baruah.

Date of Hearing : 14.06.2007

Date of Judgment : 14.06.2007

JUDGMENT AND ORDER (ORAL)

Heard Mr K K Mahanta, learned Senior Counsel appearing for the petitioner. Also heard Mr S Dutta, learned counsel appearing for The Oriental Insurance Company Ltd. and its Officers and Mr C Baruah, learned appearing on behalf of The Union of India.

2. By this writ petition, the petitioner challenges the notice-dated 14.3.2005 issued by the respondent/Company, whereby the petitioner was ordered to go on retirement w.e.f 31.3.2005. The said retirement notice was issued by taking the date of birth of the petitioner as 1.4.1945.

3. Mr K K Mahanta, learned Senior Counsel appearing for the petitioner submits that the petitioner in the year 1971 he had joined service in Sterling General Insurance Co. Ltd which has subsequently become the respondent/The Oriental Insurance Company Ltd.

At the time of joining service, the date of birth of the petitioner was recorded as 1.4.1945.

4. But pursuant to the notice-dated 14.8.1969 issued by the Gauhati University, the petitioner had applied for correction of the date of birth in his Matriculation Certificate. The Gauhati University on being satisfied, had issued the corrected certificate on 4.1.1973 indicating the date of birth of the petitioner to be 12.1.1949. The University also corrected the Matriculation Certificate, and the certificate with necessary age correction was also issued by the

Gauhati University to the petitioner.

5. The petitioner after correction of his date of birth, informed his employer by an application dated 8.1.1973 of the correction made, and requested for making necessary correction of the date of birth in the service record of the petitioner, as 12.1.1949.

6. It appears that the employer of the petitioner had thereafter, considered the date of birth of the petitioner to be 12.1.1949 in several documents issued in respect of the petitioner including the gradation list circulated on 31.12.1995. However, despite recording of the corrected date of birth as 12.1.1949, the impugned retirement notice was issued seeking to retire the petitioner from service w.e.f 31.2.2005, by taking the date of birth to be the uncorrected one of 1.4.1945. It appears that the petitioner has gone on retirement in pursuant to the retirement notice.

7. It is contended by the learned Senior Counsel appearing for the petitioner that if his corrected date of birth is taken into account, the petitioner would attain the date of superannuation only on 31.2.2009 and accordingly, direction is sought to permit the petitioner to continue his service till that date.

8. The learned counsel for the petitioner has referred to the decision reported in 2007(1) GLT 142 Oriental Insurance Co. Ltd Vs- Probodh Chandra Hazarika. The said case pertains to another similarly situated employee of the respondent/Insurance Company wherein, the Division Bench rejected the Writ Appeal filed by the Insurance Company and upheld a direction given by the Single Judge. This Court in Para 6 of the Oriental Insurance (Supra) have held that although a claim for correction of date of birth cannot be entertained by the employer at the fag end of the services of the employee, but when a corrected date of birth certificate has been acted upon by the employer- Insurance Company, without making a challenge to the corrected Matriculation Certificate, employers would not be justified in seeking to retire the person on the basis of the original date of birth, which stood corrected and acted upon by the Insurance Company.

9. It is submitted by Mr Mahanta, the learned Senior Counsel appearing for the petitioner that the present case is squarely covered by the Division Bench decision in Probodh Chandra Hazarika (Supra).

10. Mr S Dutta, learned counsel appearing for the Insurance Company does not dispute the aforesaid contention made on behalf of the petitioner.

11. In view of the above, this writ petition is allowed. The impugned retirement notice dated 14.3.2005 is hereby set aside.

The respondent Company is directed to take back the petitioner into service and to also permit him to remain in service till he attains the age of superannuation, by taking his date of birth as 12.1.1949.

All financial and service benefits due to the petitioner in view of the present order should also be made available to him.

12. The writ petition is disposed of in terms of the aforesaid view and observations.

JUDGE
dtg